Supreme Court, U.S.
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No. 96-481

In The

Supreme Court of the United States

October Term, 1996

CHARLES RAY OSWALD, ET UX,

Petitioners,

v.

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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12 pp

QUESTIONS PRESENTED

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Did the award for compensation based on the stipulation of the parties to the market value of the property involved in these expropriation suits violate any rights of the Petitioner under the Fifth Amendment to the U.S. Constitution?

II.

Are any other substantial Federal questions presented in this application?

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STATEMENT OF THE CASE

On September 25, 1987, the Louisiana Department of Transportation & Development filed suit in State District Court in Shreveport, Caddo Parish, Louisiana, in order to expropriate property from Charles and Marie Oswald which was necessary for the construction of Interstate 49 in Shreveport. On the same date and in conjunction with the filing of this formal expropriation proceeding, the State deposited the sum of $88,264 into the registry of the court for the benefit of the Oswalds. This amount represented the State's estimate of the market value of the property which was expropriated. The entire proceeding was done pursuant to the authority granted to the Louisiana Department of Transportation & Development by Louisiana Revised Statutes 48:441-460, commonly referred to as the "Quick Taking Statute".

On October 19, 1987, the Louisiana Department of Transportation & Development filed another formal expropriation suit against the Oswalds to obtain additional property along the same project needed for the construction of Interstate 49 in Shreveport. On that same date, a deposit was made into the registry of the court in the amount of $81,537 for the benefit of the Oswalds. This amount also represented the State's estimate of the market value of the property expropriated. This suit was also filed pursuant to the authority contained in the Louisiana Quick Taking Statute. The two lawsuits were consolidated shortly thereafter and have remained consolidated.

The Oswalds filed answers in both consolidated suits demanding additional compensation. They claimed that the market value of the property was higher than that

estimated by the State. They also felt that they were entitled to rental income losses and other losses above the market value of the property which are referred to in Louisiana law as "full extent" losses. These types of losses are recoverable in certain limited circumstances under Article I, Section 4 of the Louisiana Constitution of 1974.

At the beginning of the trial on the merits, the parties stipulated to the market value of the property expropriated in both lawsuits. There was also a stipulation on the amount of rental loss. This left open only the "full extent" loss issue, i.e. were the Oswalds entitled to an amount greater than the stipulated market value of the property involved in the consolidated suits?

After a trial on the merits on this issue, the District Judge found that the defendants were entitled to an award that exceeded the stipulated market value of the expropriated properties which would reflect, in the Court's words, "the full extent of the economic loss the expropriation caused to the defendants' business operation." A formal judgment was signed on January 20, 1995.

The State of Louisiana then appealed this judgment of the State District Court to the Louisiana Second Circuit Court of Appeal. On December 6, 1995, the Court of Appeal reversed the award by the Trial Judge which exceeded the stipulated market value of the property. The reversal was clearly based on the application of Louisiana law and contained absolutely no federal question issues. An application for rehearing was denied by the Court of Appeal on January 18, 1996.

A writ application to the Louisiana Supreme Court on behalf of the Oswalds was denied on March 29, 1996. It is noteworthy that not one Justice of the Louisiana Supreme Court voted to grant the application.

ARGUMENT

Petitioner contends that the jurisdiction of this Court is provided by 28 USC 1257. Respondent agrees that this is the statute that provides the authority for this Court to review a final judgment rendered by the highest Court of a State. That statute provides for review of State Court judgments in limited circumstances, i.e. (1) where the validity of a treaty or statute of the United States is drawn into question; (2) where the validity of a statute of any State is drawn into question on the ground that it is repugnant to the Constitution, treaties, or laws of the United States; or, (3) where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, or the treaties or statutes of the United States. It is obvious that there is no issue involved herein under either (1) or (2) above. The question as to whether any right of petitioner under the Fifth Amendment to the U.S. Constitution or under 28 USC 1033 has been violated will be discussed below.

Rule 10 of the Supreme Court Rules sets out the considerations governing review on certiorari. Section (b) covers a situation wherein a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. No such

allegation has been made herein by petitioner. Section (c) deals with the situation wherein a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. No such allegations have been made by petitioner in its application.

It would seem, therefore, that the only possible issue which this Court might consider is whether any rights of petitioner have been violated under the Constitution or statutes of the United States.

Did the award for compensation based on the stipulation of the parties to the market value of the property involved violate any rights of petitioner under the Fifth Amendment to the U.S. Constitution?

The Fifth Amendment to the U.S. Constitution provides that just compensation shall be paid when private property is taken for public use by eminent domain. Just compensation under the Fifth Amendment has consistently been held to mean the fair market value of the property on the date it is taken. *Kirby Forest Industries, Inc. v. United States,* 104 S. Ct. 2187, 2194 (1984). In this case the parties stipulated to the market value of the property expropriated by the State of Louisiana. By agreeing to and paying the stipulated market value of the expropriated property, the State of Louisiana complied with the requirements of the Fifth Amendment to the U.S. Constitution. Petitioner urges this Court to reinstate the Trial Judge's award of an amount in excess of market value which, in his words, "reflected the full extent of the

economic loss the expropriation caused to the defendant's business operation". It is clear from the jurisprudence applying the Fifth Amendment, however, that these types of losses are not available under the Fifth Amendment.

> "The Constitution and the statutes do not define the meaning of just compensation. But it has come to be recognized that just compensation is the value of the interest taken. This is not the value to the owner for his particular purposes or to the condemnor for some special use but a so called 'market value'. It is recognized that an owner often receives less than the value of the property to him but experience has shown that the rule is reasonably satisfactory." *United States v. Petty Motor Co.*, 327 U.S. 372, 66 S. Ct. 596, 599.

In considering just compensation under the Fifth Amendment, any special or unique value to the owner of the property condemned by the government is not to be considered. *United States v. 26.3765 Acres Of Land*, 62 F. Supp. 910, 913.

Petitioner seemingly urges this Court to expand compensation under the Fifth Amendment to exceed the market value of the property expropriated by arguing that they could not reinvest that market value and generate the same net income that they previously received from the expropriated property. This would be a radical departure from the consistent federal jurisprudence interpreting compensation due under the Fifth Amendment, i.e. that is limited to the fair market value of the property.

> "The reason now advanced is that she sought to show improved prevailing interest rates at the time of taking to inform the jury just what

> amount of money she should receive to bring her as much income from stocks and bonds as she had been receiving from her farm lands and pecan orchard. Such evidence certainly was not relevant . . . Moreover, what people will do with money is as variable as are the tastes and capacities of men. . . . In the acquisition of land by condemnation, fair market value can not be based upon the capacity and experience of the landowner to handle and invest money. Furthermore, appellant's contention is unsound as a matter of law. The just compensation to which an owner is entitled is the fair market value of the property that has been taken." *3535 Acres of Land v. United States,* 146 F. 2d 872, 873 (5th Cir. 1945).

Louisiana's highest court has rejected petitioner's arguments even under Louisiana's much more liberal and expansive basis for awarding compensation under its Constitution. By affirming the holding of the intermediate appellate court, the Louisiana Supreme Court has indicated, without a dissenting vote, that the situation involved in these consolidated expropriation suits was not one in which an award exceeding market value was proper even under Louisiana's more liberal and expansive concept of compensation. There is certainly no basis for the argument that petitioner's rights under the Fifth Amendment have been violated.

Are any other substantial federal questions presented in this application?

Petitioner has attempted to create a federal question issue by bringing up 26 USC 1033, a federal statute that played a totally insignificant part in the trial of this

matter and played absolutely no part in the decisions of the Louisiana Supreme Court or the Louisiana Court of Appeal. No claim is made by petitioner that the validity of this statute has been drawn into question as required by 28 USC 1257(1), nor has there been any claim that any right under the statute has been violated by this expropriation under 28 USC 1257(3).

It must be remembered that the sole issue at the trial after the stipulation was whether or not petitioners were entitled, under Louisiana law, to any compensation in excess of market value. Petitioners argued that reinvestment of the stipulated market value would not allow them to replace the income stream from the expropriated property. The State attempted to show that this was not true. On rebuttal, petitioners raised the effect of 26 USC 1033 in an attempt to show that the State's theory was wrong.

In reversing the Trial Court's award for full extent losses in excess of market value, the Louisiana Court of Appeal never reached the issue of whether or not the income stream could be replaced by the investment of the stipulated market value. Instead, they ruled that petitioners were not entitled, as a matter of Louisiana law, to any amount in excess of market value under any circumstances. They found that, as a factual matter, the expropriated property was not of the type that would trigger any full extent compensation in excess of market value. Thus, the question of the effect of 26 USC 1033, which controls the tax consequences of involuntary conversions, did not factor into their decision at all. It is obvious that this federal statute played a totally insignificant and inconsequential part in this litigation.

It is interesting to note that petitioner's application contains no federal cases. Instead the argument is based entirely on four (4) Louisiana cases, the Louisiana Constitution and Louisiana statutes. While the Fifth Amendment and Fourteenth Amendment are generally referred to, no argument is ever made to show this Court how the Fifth Amendment was violated. No Fourteenth Amendment issues of any type are raised.

CONCLUSION

The sole possible federal issue involved in this application is whether or not petitioner has received compensation for the property taken pursuant to the Fifth Amendment to the U.S. Constitution. Since this Court's interpretation of just compensation under the Fifth Amendment limits it to the fair market value of the property expropriated, and since the parties stipulated to that fair market value, there can be no question but that the Fifth Amendment has been complied with. There are no other federal questions raised in the application which would possibly bestow on this Court jurisdiction pursuant to 28 USC 1257.

Respectfully submitted:

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